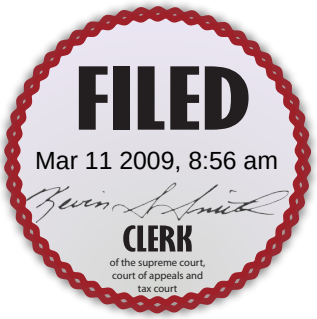

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IN THE
COURT OF APPEALS OF INDIANA

JEFF KUHN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A04-0808-CR-476
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John Marnocha, Judge
Cause No. 45G04-9609-CF-162

March 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Jeff Kuhn appeals his sentence for burglary as a class B felony[1] and theft as a class D felony.[2] Kuhn raises one issue, which we restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. Kuhn had previously dated Carol Carlson and had performed some handyman work at her residence, including changing the locks on her doors. In October 2007, Kuhn used a key to gain entrance to Carlson's residence without her permission. Kuhn took a credit card out of Carlson's purse and used it to purchase items.

The State charged Kuhn with burglary as a class B felony and theft as a class D felony, and Kuhn pled guilty as charged pursuant to a plea agreement. Under the plea agreement, the executed sentence was capped at six years and the sentences were to be concurrent. The trial court sentenced Kuhn to six years in the Indiana Department of Correction for the burglary conviction and one and one-half years for the theft conviction. The trial court ordered that the sentences be served concurrently.

The issue is whether Kuhn's six-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial

[1] Ind. Code § 35-43-2-1 (2004).

[2] Ind. Code § 35-43-4-2 (2004).

court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Kuhn asks that we revise the sentence to a probationary term with substance abuse treatment.

Initially, we note that Kuhn has failed to include the presentence investigation report ("PSI") in his appendix. His failure to include the PSI in the record on appeal hampers our ability to consider his argument and review the trial court's sentencing decision. But see Ind. Appellate Rule 49(B) (providing that "[a]ny party's failure to include any item in an Appendix shall not waive any issue or argument"). We remind Kuhn that, as the appellant, he bears the burden of presenting a record that is complete with respect to the issues raised on appeal. Ford v. State, 704 N.E.2d 457, 461 (Ind. 1998), reh'g denied.

Our review of the nature of the offense reveals that Kuhn had previously dated Carlson and had performed some handyman work at her residence, including changing the locks on her doors. In October 2007, Kuhn used a key to gain entrance to Carlson's residence without her permission. Kuhn took a credit card out of Carlson's purse and used it to purchase items.

Our review of the character of the offender reveals that twenty-nine-year-old Kuhn does not have a felony criminal record but has a misdemeanor record. Kuhn pled guilty as charged. At the guilty plea hearing, Kuhn stated that he had "some drinking and

driving charge about ten years ago." Transcript at 13. At the sentencing hearing, his counsel mentioned a "thing out in Virginia that's still pending, some misdemeanor stuff that he needs to take care of." Id. at 22. He admittedly has had a substance abuse problem for sixteen years. Kuhn stated that he has "always worked" and has a seven-year-old son. Id. at 24.

Kuhn argues that, given his minimal criminal history, remorse, employment history, substance abuse issues, and circumstances surrounding the crime, "it is clear that a sentence served on a probationary term that required [] substance abuse treatment would be most appropriate" rather than the executed minimum six-year sentence for a class B felony ordered by the trial court. Appellant's Brief at 4. However, we conclude that Kuhn has not met his burden of demonstrating that the sentence is inappropriate. He was trusted with keys to Carlson's home and abused that trust. He broke into her home and stole and used her credit card. He also illegally abused drugs for over a decade.

The trial court gave great weight to Kuhn's admitted sixteen-year-old substance abuse problem. The trial court noted that the long substance abuse history "may explain the conduct, but it doesn't really excuse it" and "being involved in the drugs that [Kuhn had] admitted that [he had] been involved in [were] criminal acts in and of themselves." Transcript at 25. After due consideration of the trial court's decision, we cannot say that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender.

For the foregoing reasons, we affirm Kuhn's sentence for burglary as a class B felony and theft as a class D felony.

Affirmed.

ROBB, J. and CRONE, J. concur